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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-397

13 **PHYLLIS LORRAINE CIMINO,**
14 **AKA PHYLLIS LORRAINE LINDEN**
15 **910 SW 30th Street**
16 **Battle Ground, WA 98604**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

17 **Registered Nurse License No. 244794**
18 **Public Health Nurse Certificate No. 48533**

19 Respondent.

20 **FINDINGS OF FACT**

21 1. On November 14, 2012, Complainant Louise R. Bailey, M.Ed., RN, in her official
22 capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer
23 Affairs, filed Accusation No. 2013-397 against Phyllis Lorraine Cimino, also known as Phyllis
24 Lorraine Linden (Respondent) before the Board of Registered Nursing. (Accusation attached as
25 Exhibit A.)

26 2. On August 31, 1974, the Board of Registered Nursing (Board) issued Registered
27 Nurse License No. 244794 to Respondent. The Registered Nurse License expired on October 31,
28 2009, and has not been renewed.

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1 3. On April 11, 1992, the Board issued Public Health Nurse Certificate No. 48533 to
2 Respondent. The Public Health Nurse Certificate expired on October 31, 2009, and has not been
3 renewed.

4 4. On November 14, 2012, Respondent was served by Certified and First Class Mail
5 copies of Accusation No. 2013-397, Statement to Respondent, Notice of Defense, Request for
6 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7)
7 at Respondent's address of record which, pursuant to California Code of Regulations, title 16,
8 section 1409.1, is required to be reported and maintained with the Board. Respondent's address
9 of record was and is 910 SW 30th Street, Battle Ground, WA 98604.

10 5. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and Business & Professions Code (Code)
12 section 124.

13 6. On November 26, 2012, the return receipt for the aforementioned documents sent
14 by Certified Mail with tracking number 7011 0470 0002 9522 5836 was returned by the U.S.
15 Postal Service marked "Date of Delivery 11/19/2012."

16 7. Government Code section 11506 states, in pertinent part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts of
19 the accusation not expressly admitted. Failure to file a notice of defense shall constitute a
20 waiver of respondent's right to a hearing, but the agency in its discretion may
21 nevertheless grant a hearing.

22 8. Respondent failed to file a Notice of Defense within 15 days after service upon
23 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation
24 No. 2013-397.

25 9. California Government Code section 11520 states, in pertinent part:

26 (a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions or
28 upon other evidence and affidavits may be used as evidence without any notice to
29 respondent.

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10. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2013-397, finds that the charges and allegations in Accusation No. 2013-397, are separately and severally, found to be true and correct by clear and convincing evidence.

11. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1,205.00 as of December 10, 2012.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Phyllis Lorraine Cimino, also known as Phyllis Lorraine Linden has subjected her Registered Nurse License No. 244794 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Respondent has subjected her Registered Nurse License and Public Health Nurse Certificate to disciplinary action under Code section 2761, subdivision (a)(4), in that on May 6, 2010 her Washington registered nurse credential was disciplined by the State of Washington Department of Health Nursing Care Quality Assurance Commission in a matter entitled, *In the Matter of Phyllis L. Cimino, Credential No. RN.RN.00167649*, by issuing amended charges of unprofessional conduct against her under Revised Code of Washington (RCW) section 18.130.180. Respondent was charged with unprofessional conduct in violation of RCW 18.130.180(17) for sustaining a conviction for Offering False Instrument for Filing or Record, a class C felony, in the Superior Court of the State of Washington, case No. 08-1-02190-4, which resulted in her credential being placed on probation for not less than two years.

1 **ORDER**

2 IT IS SO ORDERED that Registered Nurse License No. 244794 and Public Health Nurse
3 Certificate No. 48533, heretofore issued to Respondent Phyllis Lorraine Cimino, aka Phyllis
4 Lorraine Linden, are revoked.

5 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
6 written motion requesting that the Decision be vacated and stating the grounds relied on within
7 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
8 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

9 This Decision shall become effective on MAY 22, 2013.

10 It is so ORDERED APRIL 22, 2013.

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14 FOR THE BOARD OF REGISTERED NURSING
15 DEPARTMENT OF CONSUMER AFFAIRS

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18 70657269.DOC
DOJ Matter ID:SD2012703985

19 Attachment:
20 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-397*

13 **PHYLLIS LORRAINE CIMINO,**
14 **AKA PHYLLIS LORRAINE LINDEN**
15 **910 SW 30th Street**
Battle Ground, WA 98604

A C C U S A T I O N

16 **Registered Nurse License No. 244794**
Public Health Nurse Certificate No. 48533

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about August 31, 1974, the Board of Registered Nursing issued Registered
25 Nurse License Number 244794 to Phyllis Lorraine Cimino, also known as Phyllis Lorraine
26 Linden (Respondent). The Registered Nurse License expired on October 31, 2009, and has not
27 been renewed.

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3. On or about April 11, 1992, the Board of Registered Nursing issued Public Health Nurse Certificate Number 48533 to Phyllis Lorraine Cimino, also known as Phyllis Lorraine Linden (Respondent). The Public Health Nurse Certificate expired on October 31, 2009, and has not been renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

• • • •

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

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1 **COST RECOVERY**

2 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licentiate found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **CAUSE FOR DISCIPLINE**

7 **(Out of State Discipline)**

8 9. Respondent has subjected her Registered Nurse License and Public Health Nurse
9 Certificate to disciplinary action under Code section 2761, subdivision (a)(4), in that her
10 Washington registered nurse credential was disciplined by the State of Washington Department
11 of Health Nursing Care Quality Assurance Commission (Commission) in a disciplinary action,
12 which resulted in her credential being placed on probation for not less than two years. The
13 circumstances are as follows.

14 10. On September 13, 2006, Respondent was issued a credential to practice as a
15 registered nurse in Washington.

16 11. On May 6, 2010, the Commission took disciplinary action against Respondent's
17 registered nurse credential in a matter entitled, *In the Matter of Phyllis L. Cimino, Credential No.*
18 *RN.RN.00167649*, by issuing amended charges of unprofessional conduct against her under
19 Revised Code of Washington (RCW) section 18.130.180. Respondent was charged with
20 unprofessional conduct in violation of RCW 18.130.180(17) for sustaining a conviction for
21 Offering False Instrument for Filing or Record, a class C felony, in the Superior Court of the
22 State of Washington, case No. 08-1-02190-4.

23 12. The facts that led to the conviction are as follows. Respondent's mother had a
24 "common law marriage type" of relationship with a man for about 25 years, although the two
25 were never married. On April 16, 2007, the man died and within a few hours, Respondent
26 withdrew approximately \$85,405.61 from the man's saving's account. As evidence that
27 Respondent had authority to withdraw the man's funds, she presented to the man's bank a forged
28 Washington General Durable Power of Attorney dated April 12, 2007. Respondent used the

1 money she got from the man's bank to pay off the first mortgage on her personal residence in
2 Vancouver, Washington in the approximate amount of \$83,550.00.

3 13. On June 18, 2010, Stipulated Findings of Fact, Conclusions of Law and an
4 Agreed Order was accepted by the Commission as its order in resolution of the disciplinary
5 action. In the Agreed Order, Respondent's credential to practice as a registered nurse in the state
6 of Washington was placed on probation for at least twenty-four (24) months commencing on the
7 effective date of the order. Respondent was required to comply with terms and conditions of the
8 probation order.

9 **PRAYER**

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

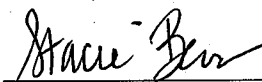
12 1. Revoking or suspending Registered Nurse License Number 244794, issued to
13 Phyllis Lorraine Cimino;

14 2. Revoking or suspending Public Health Nurse Certificate Number 48533, issued to
15 Phyllis Lorraine Cimino;

16 3. Ordering Phyllis Lorraine Cimino to pay the Board of Registered Nursing the
17 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;

19 4. Taking such other and further action as deemed necessary and proper.

20
21 DATED: November 14, 2012

for 
22 LOUISE R. BAILEY, M.ED., RN
23 Executive Officer
24 Board of Registered Nursing
25 Department of Consumer Affairs
26 State of California
27 Complainant

28 SD2012703985
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